



JAN 03 2002

BAKER BOTTS L.L.P.
30 Rockefeller Plaza
New York, NY 10112-4498

In re Application of
PETERSEN, Michael *et al*
Application No.: 09/622,385
PCT No.: PCT/EP99/01017
Int. Filing Date: 18 February 1999
Priority Date: 18 February 1998
Attorney's Docket No.: A33251
For: PROCESS FOR PREPARING
TRIFLUORO-3(R)-HYDROXYBUTRIC
ACID DERIVATIVES

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

The decision is in response to applicants' "Response to Notification of Abandonment" filed on 15 October 2001 which is treated as a petition to withdraw the holding of abandonment. No fee is required.

BACKGROUND

On 12 September 2000, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that a declaration in compliance with 37 CFR 1.497(a) must be provided. A one-month time period for response was set.

On 06 November 2000, applicants purportedly filed an executed declaration, a petition for a one-month extension, and a check of \$240.00 for the surcharge fee and one-month extension fee.

On 18 September 2001, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909) stating that the above-captioned application was abandoned because applicants failed to respond to the Form PCT/DO/EO/905 within the time period set.

On 15 October 2001, applicants filed the instant petition which was accompanied by, *inter alia*, copies of the documents purportedly filed 06 November 2000, a copy of a check (No. 161462) for \$240.00 dated 01 November 2000 and made out to the "Commissioner of Patent and Trademarks", and a stamped postcard receipt.

DISCUSSION

A review of the financial records for the above-identified application show that a

surcharge fee of \$130.00 and an extension fee of \$110.00 was received on 06 November 2000. However, a search of the application file did not locate the declaration. Nevertheless, MPEP § 503 lists procedures to ensure receipt of any paper filed in the USPTO. Applicants must enclose a self-addressed postcard identifying all of the papers filed. The USPTO will stamp the receipt date on the card and place it on the outgoing mail. The identifying data on the card must clearly identify the paper for which receipt is requested. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

In this case, applicants have provided a copy of the date-stamped filing receipt for the documents submitted 06 November 2000. The filing receipt records that a declaration and POA, petition for one-month extension, and check for \$240.00 were received in the USPTO. The U.S. serial number "09/622,385" is listed on the filing receipt along with the attorney docket number. The filing receipt is stamped "OIKE NOV 06 2000" across its face.

Accordingly, applicants have provided *prima facie* evidence that the declaration and other documents listed above were received by the USPTO on 06 November 2000.

DECISION

For the reasons above, the petition to withdraw the holding of abandonment is GRANTED. The Form PCT/DO/EO/909 mailed 18 September 2001 is hereby VACATED.

The surcharge fee of \$130.00 pursuant to 37 CFR 1.492(e) was previously paid on 16 August 2000. Applicants paid this fee again on 06 November 2000. Therefore, Deposit Account No. 02-4377 will be credited the additional surcharge fee paid.

Applicants have completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 18 February 1999, under 35 U.S.C. 363, and a 35 U.S.C. 371(c) date of 06 November 2000.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.


James Thomson
Attorney Advisor
PCT Legal Office

Tel.: (703) 308-6457